

ROBERT H. JONES
JAMES E. JONES

IBLA 76-165

Decided June 2, 1976

Appeal from decision of the Riverside, California, District Office, Bureau of Land Management, denying renewal of grazing lease 04067431.

Affirmed.

1. Grazing Leases: Applications--Grazing Leases: Renewal

A grazing lease is properly denied when utilization of the leased property could have a substantial adverse effect on the environment and the Bureau of Land Management is under court order forbidding approval of such activity pending the preparation, filing and acceptance of an environmental impact statement.

APPEARANCES: Robert H. Jones, pro se.

OPINION BY ADMINISTRATIVE JUDGE STUEBING

Robert H. and James E. Jones appeal from the July 22, 1975, decision of the Riverside, California, District Office, Bureau of Land Management (BLM), which denied their application for renewal of a grazing lease of land located in San Bernadino County, California.

The Joneses applied for a lease in 1969 for 167,040 acres of public land located in the Mojave Desert. This kind of range is classified as "ephemeral range." Ephemeral range ordinarily contains insufficient forage for the grazing of livestock. In some years, though, more than ordinary rainfall produces enough forage to permit a minimal amount of grazing. Consequently, leases issued for this kind of land are issued for grazing contingent upon there being sufficient forage. A lessee is required to submit an application for

approval of grazing before he may actually utilize any of the land under lease. The one year cited by BLM in which adequate forage was available for grazing on this land was 1973. Appellants applied for permission to graze 50 head of cattle for 6 months. Permission was denied because there was no water source on the land.

In this particular case, appellants also entered into other cooperative agreements with BLM in which appellants agreed to obtain adequate water for livestock. These cooperative agreements were made in 1969 and 1972. Both times, appellants agreed to complete and maintain a source of water within 1 year. Though the improvements were never made, the lease was renewed each year from 1969 through 1974. However, the lease approved in 1974 contained the stipulation that if a well were not completed by June 20, 1975, the lease would not be renewed. Appellants did not start work on a well until the spring of 1975. When employees of the BLM discovered that appellants were bulldozing a road through the desert to a prospective well site, they informed appellants that a permit from the BLM was required before further range improvements could be made. On May 23, 1975, appellants submitted an application for permission to drill the well. On June 6, 1975, and before the Riverside Office could grant permission to drill, that office was informed of a settlement of litigation between BLM and the Natural Resources Defense Council, Inc. The Council had brought suit against the BLM, contesting the adequacy of the Bureau's programmatic environmental impact statement for grazing leases. The Council prevailed and entered into an agreement with the BLM for scheduling further environmental impact statements. Natural Resources Defense Council, Inc. v. Morton, 388 F. Supp. 829 (D. D.C. 1974). Essentially, the BLM will be unable to allow appellants permission to drill a well until an environmental impact statement has been prepared and approved. Preparation and approval of those statements is expected to take several years.

On July 22, 1975, the Riverside District Office issued the decision denying renewal of appellants' grazing lease. In that decision, the BLM concluded that appellants had no need for the land as required by 43 CFR 4121.1-1(a). That conclusion was based on appellants' failure to use the land at all during the period of 6 years from 1969 to 1975, and on appellants' dilatory conduct in developing a source of water necessary for use of the land.

Appellants assert that they do need the land and that there are legitimate reasons for their past delay. For example, they state that they were unable to obtain financing for drilling the well from 1972 to 1974 at a reasonable interest rate. Moreover, they point to the reluctance of those who drill water wells to venture into such isolated areas. Finally, they state, had it not been for the BLM's "delaying tactics" in 1975 the well would have been drilled before the expiration of the lease.

[1] We need not rule on appellants' contentions, for as long as the BLM is bound by the court-approved agreement, it may not permit any major disturbance of the environment. The agreement between the Natural Resources Defense Council and the BLM provides, in pertinent part:

* * * [T]he Federal Defendants recognize that action(s) which are supportive of grazing as described in subparagraph (f) above may have significant impact on the human environment and in such cases, no such action(s) will be undertaken without an [environmental impact statement] completed on such action or area.

Subparagraph (f) provides, in part:

"Livestock grazing activities" as used in this agreement shall mean all existing or proposed livestock grazing, all grazing use authorizations issued or contemplated to be issued by BLM as well as those substantial activities which are supportive of and related to livestock grazing administered by BLM, such as fencing, livestock water development, grazing, chaining, seeding, and brush removal. (Emphasis added.)

Appellants may reapply when an acceptable environmental impact statement has been filed. Until then it would be futile to issue a lease, as the BLM could not permit any use of the leased area.

Therefore, pursuant to the authority delegated to the Board of Land Appeals by the Secretary of the Interior, 43 CFR 4.1, the decision appealed from is affirmed.

Edward W. Stuebing

Administrative Judge

I concur:

Douglas E. Henriques
Administrative Judge

I concur in the result:

Joan B. Thompson
Administrative Judge

